SPECIAL MENTION

Fire in Jubalpur Ordnance Depot

श्रीमती रत्न कुमारी (मध्य प्रदेश) : महोदय, जबलपुर में सेन्ट्रल आर्डिनेंस डिपो में . . .

श्री अटल बिहारी वाजपेयी (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, जबलपुर के बारे में लोक सभा में वक्तव्य दिया जा चुका है मगर इस सदन में मंत्री महोदय वक्तव्य लेकर नहीं आये ।

SHRI V. GOPALSAMY (Tamil Nadu): What about other Bills, Sir?

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): She wants to make a mention. This is also Private Member's business.

SHRI V. GOPALSAMY: Mr. Vajpayee has withdrawn his Bill; next is my Bill.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): Can't you accommodate her just for a minute?

श्रीमती रत्न कुमारी : उपसभाध्यक्ष महोदय, जबलपुर सेन्ट्रल आर्डिनेंस डिपो में भयंकर आग लगने की दुर्घटना जिसमें करोड़ों रुपये का गोला बारूद आदि नष्ट हुआ है, चिन्ताजनक है ।

मैं भारत सरकार तथा मध्य प्रदेश सरकार की सराहना किये बिना नहीं रह सकती जिन्होंने समय पर उचित कार्यवाही करके डिपो के साथ लगे गांवों को खाली करवा लिया जिससे कोई जानी नुकसान न हो और जल्दी ही आग पर काबू पा लिया ।

मेरा सरकार से अनुरोध है कि जो भी इस आग से प्रभावित हुये है उन लोगों को उचित सहायता प्रदान की जाये और आग लगने के कारणों का पता लगाया जाए जिससे आगे ऐसी दुर्घटनायें न हो सकें । महोदय, वह बहुत ही सुरक्षित स्थान था और जमीन के नीचे बना हुआ है ।

उपसभाध्यक्ष (श्री पशुपति नाथ कुकुल) : आपका खत्म होगा, बस ठीक है ।

SHRI V. GOPALSAMY: I am on a point of order. On a Private Members' day, nothing else can be taken up except the Private Members' Business according to the List of Business circulated.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): This is also not an official business.

SHRI V. GOPALSAMY: Mr. Vajpayee is here; Mr. Advani is here. It is a Private Members' day and we cannot take up any other business between 2.30 and 5. You cannot allow special mention here. It is the time for Private Members' business.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): If you are speaking on a point of order, I disallow it.

Now we take up the next Bill. Dr. Kaldate, not here. Shri K. Vasudeva Panicker, not here. Shri Sharad Yadav, not present. Shri N. E. Balaram, not present. Shri Gopalsamy.

THE INTERCEPTION OF MESSAGES AND POSTAL ARTICLES (REMOVAL OF POWER) BILL, 1985

SHRI V. GOPALSAMY (Tamil Nadu): Sir, I move:

> "That the Bill further to amend the Indian Telegraph Act, 1885 and the Indian Post Office Act, 1898, with a view to removing the power of the Central Government or State Government to intercept messages and postal articles, be taken into consideration."

Mr. Vice-Chairman, Sir, today, I am the happiest person because I have been waiting to get a discussion on my Bill since 1980. I introduced the Bill during my first

term. For four years, I waited. Everytime when my chance came in the ballot, the hon. Minister would see to it that my turn did not come by fielding more speakers in relation to the earlier Bill. Again, when I was elected to the Rajya Sabha in 1984, I introduced the Bill again. For four years, I have been waiting. Today,...

SHRI LAL K. ADVANI (Madhya Pradesh): Your turn has come now because four Members are absent today.

SHRI V. GOPALSAMY: Yes. Also, the Government could not intercept the message which I conveyed to Dr. Bapu Kaldate. Last time, when my turn came, when my name was about to be called, Mr. Jacob fielded more speakers from the treasury benches. *(Interruptions)*

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI M. M. JACOB): Mr. Gopalsamy, this is not fair. *(Interruptions)*

SHRI PAWAN KUMAR BANSAL (Punjab): This is not fair. We would have asked Mr. Vasudeva Panicker to be present if we knew that you were going to make such a wild allegation. *(Interruptions)*

SHRI V. GOPALSAMY: Sir, the whole country is concerned over the Postal Bill. My Bill is titled 'The Interception of Messages and Postal Articles (Removal of Power) Bill, 1985'.

Sir, section 5 of the Indian Telegraph Act, 1885 and section 26 of the Indian Post Office Act, 1898, give power to the authorities to intercept messages and postal articles. A report has disclosed widespread interception of letters and telegrams to and from persons listed by a State Government to be kept under surveillance. There were instances of this earlier also. This is being sought to be justified under the above-mentioned enactments which were framed by an imperial Government which had reasons to suspect danger from innocent public activity. The practice and power from which it emanates is, in the present democratic set-up, most reprehensible and archaic. These provisions are relics of a bygone age of arbitrary irresponsive administration having little regard for inviolability of human liberties. After India attained Independence, these provisions which confer power to invade a citizen's right to privacy should have been withdrawn at one stroke. Such a practice can become a convenient tool in the hands of unscrupulous authorities to be used more for partisan purposes than for "public safety". The most obnoxious aspect of the whole sordid story is that the powers of mail interception have been in use in Karnataka and Tamil Nadu. It is, therefore, necessary that exercise of such power should be done away with.

Sir, this is a very very long story. It would be a privilege for me to quote Mr. Advani, who has written a very beautiful article on the Postal Bill in the 'Indian Express' under the caption "Send it back", in the year 1981, on the 25th February. I would like to quote that he has written. Mr. Advani has done a lot of research on this.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Mr. Vice-Chairman, Sir, I am on a point of order and I would request you to give your decision on this. Just half a minute. The Indian Post Office Act was passed by both Houses of Parliament and it was sent to the President for his assent. The President has not given his as sent yet. It is still pending with the President. When it is still pending with the President, can we discuss this Bill?

SHRI V. GOPALSAMY: Mr. Matto has not understood. I am very sorry, my hon. friend, in his enthusiasm to support the Government on all occa-

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sions, has not understood what I am saying. My Bill seeks to totally scrap both section 5 of the Indian Telegraph Act, 1885 and section 26 of the Indian Post Office Act, 1898

SHRI GHULAM RASOOL MATTO: This has not become an Act yet. The President has not given his assent.

SHRI V. GOPALSAMY: He has not understood. The Act is very much there. the Act is very much. Mr. Matto has not understood this. I really wonder...

SHRI GHULAM RASOOL MATTO : But, Sir, he is referring to a section. That Act will be complete only when the President gives his assent. If he puts a motion that he wants that this should not be interecepted,I can understand it. But he is referring to sections 4 and 5 of the Act.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL) : If the Act has not been amended yet, then the Act that exists holds good and he wants to amend that.

SHRI V. GOPALSAMY : Even then he has not understood what amendments were brought, what modifications were done by the Government to the original Act because he has not understood it at all, he has not understood the thrust of my demand.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL) : After eight years he has got a chance.

SHRI V. GOPALSAMY : My point is that the whole section should be scrapped. I hope you are convinced now. You must be convinced now.

SHRI GHULAM RASOOL MATTO : Yes, after the ruling of the Chair naturally.

SHRI V. GOPALSAMY : When the original Act was discussed, the one provision of the Bill which provoked sharp debate even then was section 26 of the Indian Post Office Act which empowered Government to intercept the mail of private citizens. Ninety years later, the same provision has again attracted a unanimous protest from all sections of Opposition parties and all sections of democratic forces which have described it as violative of the democratic ethos of the Indian Constitution.

Sir, in 1898 the British Government had first referred the Post Office Bill to a Select Committee. On all clauses the Committee was unanimous but on clause 26, which is the most Draconian provision of the Act, an Indian member, Rai Bahadur Anandacharlu would not agree. When the report was finalised, he formally recorded a minute of dissent in respect of clause 26. Later when the Central Legislature presided over by Viceroy Earl of Elgin took up the report and the Bill for adoption, Rai Bahadur Anandacharlu once again resisted the inclusion of this provision. He tabled two amendments seeking to provide safeguards against the abuse of executive authority in this regard. The first sought to ensure that if anyone's mail was opened, the cover would have to be stamped "opened by authority" and the second wanted Government to spell out what it meant by "public emergency"...

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh) : Sir, neither the Minister of Communication nor the Law Minister is there. No Minister excepting our Jacob Sahib is there. The Minister concerned must be present. It is a very important Bill.

SHRI V. GOPALSAMY : Your communication network has broken. The concerned Minister should be ready.

SHRI B. SATYANARAYAN REDDY : The Minister concerned should be there.

SHRI V. GOPALSAMY : You have been taken by surprise now.

SHRI M. M. JACOB : Sir, there is collective responsibility.

SHRI PAWAN KUMAR BANSAL : Sir, Mr. Gopalsamy is more happy on that fact only.

SHRI V. GOPALSAMY : Yes, it is your duty. For all the Bills that are tabled, the Minister should be ready.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL) : Actually before your Bill, there were so many other Bills. So which Minister should be present ? Suppose Mr. Balaram was there, or suppose Mr. Yadav was there. That is why I say, you see two Ministers are here and they will note down the points.

SHRI V. GOPALSAMY : But the concerned Minister is not here.

SHRI LAL K. ADVANI: Mr. Vice-Chairman, in this situation about half an hour back also it was obvious that this Bill is likely to come. When Vajpayeeji and the Law Minister started speaking, it was about quarter to four or four at that time. My submission is that in this matter, it is the Parliamentary Affairs Department that sees to it that the Minister concerned is there. All these people were absent. It was known. Therefor....

THE VICE-CHAIRMAN (SHRI P. N. SUKUL) : He was also absent. He came just ten minutes before.

SHRI LAL K. ADVANI : Yes, yes, just ten minutes before he came. He was absent. As he said, he was deliberately absent for some time. But this is certainly not fair to the debate that the Minister concerned should not be here. It is not fair to the mover of the Bill.

SHRI M. M. JACOB : Advaniji, the moment I saw Mr. Gopalsamy, I sent for the Communications Minister. Mr. Gopalsamy was himself absent. That is why we could not anticipate.

SHRI LAL K. ADVANI : He was in the lobby waiting to pounce.

SHRI PAWAN KUMAR BANSAL : He has not yet overcome the euphoria that the Bill has been taken up.

SHRI V. GOPALSAMY : Through fair means I tried all these eight years. Only guerilla tactics seem to work with you.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL) : In fact, Mr. Gopalsamy did not mind the absence of the Minister. The absence was minded by Mr. Reddy.

SHRI B. SATYANARAYAN REDDY : Even Mr. Gopalsamy minded it. Why not? He wanted that the concerned Minister should be present.

SHRI LAL K. ADVANI : The Minister has been sent for.

SHRI V. GOPALSAMY : Mr. Vice-Chairman, Sir, this snooping practice, this pernicious practice, this most indecent practice and nasty practice came "in the days of Oliver Cromwell who justified it in order to discover and prevent many dangerous and wicked designs, which have been and are daily contrived against the peace and welfare of the Commonwealth, the intelligence of which cannot be well communicated but by letter".

Mr. Vice-Chairman, you are well aware of the history of the United Kingdom, the constitutional history of England, what happened in the later years. There was Mr. Oliver Cromwell who was respected and whose words were the command of the unearthed from his tomb and publicly the skeleton was hanged. That is the history of the United Kingdom. So, that snooping practice and all the pernicious means of the dictatorial regime of Mr. Oliver Cromwell were not tolerated, not pardoned by the people of the United Kingdom.

Sir, again, in the year 1844, "there were loud protests when a warrant was issued by the Secretary of State for the opening of the letters of Joseph Mazzini, the Italian patriot. These protests led to the constitution of two Secret Committees, one of each House of Parliament to examine the matter. The latest parliamentary probe in this regard was in 1957, when a Committee of Privy Councillors headed by Norman Birkett was set up. The Birkett Committee's recommendations were accepted by the British Government. There has been criticism of the recommendations. One of the three members of the Committee, Mr. Walker, expressed disagreement. But they do add up to very firm guidelines."

This is a colonial hang-over. This Post Office Act is a colonial hang-over. When the Bill was brought by the Government

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modifying the Indian Post Office Act under the pretext as if the Government was implementing the recommendations of the Law Commission, again it was another assault on democracy.

Sir, it is claimed that the Bill which is pending before the President of India for assent actually dilutes the powers of the Government to intercept citizens' mail because it drops sub-section (2) of section 26 of the 1898 Act which stated that in case a doubt arises whether the Government has acted in accordance with the stipulations of sub-section (1), a certificate to that effect by the auhorities shall be conclusive proof of the point.

This, it has been held serves the purpose of opening to judicial review—an action taken under Section 26, which otherwise bars it. Nothing could be more disingenuous; under Article 226 of the Constitution, all such actions are already subject to judicial review. Clause 16 is certainly not aimed at achieving a dilution of the Government's powers.

This Bill also empowers the Government to decide if it is necessary or expedient to do so. This formulation is crucial. The 1898 Act authorised the Government to intercept mail only on the occurrence of any public emergency or in the interest of the public safety or tranquillity. There was no mention in it of the Government being satisfied—a very vague term and also a dangerous subject—that public emergency has occurred. If the Government is satisfied, I I repeat it, satisfied that public emergency has occurred or that it is necessary or expedient to intercept mail on a host of other counts—for instance if it is satisfied that it is expedient to intercept or distroy a citizen's mail so as to prevent destroy a citizen's mail so as to preincitement to an offence—it can do so. It is plain that such a suspicion need not be reasonable or grounded in any evidence nor is it necessary for the Government to define offence, incitement or public order, leave alone the security of the State before it exercises its blanket powers under the Bill Besides, the Bill does not satisfy two basic demands of justice, namely reasonable scope for the intervention of a judicial agency before an administrative order is passed and the obligation upon the State to communicate to he afiected person that such an order has been passed.

The Bill was passed by the Parliament because the Government has got the brutal majority and the Bill was sent to hon. President. The then President, hon. Zail Singh did not give his assent, but he sought some clarifications. He sent a letter to the Government. It is very relevant and through you I draw the attention of the Government to the remarks he made in that letter. As mentioned in the first letter sent by the President's Office to the Communications Ministry: (1) That the Bill ran counter to the Law Commission's recommendation. It is very important; (2) that the expression; 'public emergency' was capable of being given a rather wide meaning and may not be adequate to make the power of interception of postal articles valid with reference to the freedow of expression; (3) that the power given to the Centre or State Governments to authorise any officer to intercept mail prevents proper application of mind at a sufficiently high level; (4) that the party whose mail was to be intercepted was not to be given any prior intimation; and (5) that there was a case for taking a liberal and progressive view in the matter of mail interception in view of the Supreme Court judgments on Fundamental Rights. This is the letter sent by the then President of India to the Government. Many people do not know how this interception is being done. The cover of the postal department had been used so long, but under the law even the postal department is not authorised to censor mail without written orders of a competent authority. Therefore, there is one department—the Postal Research Centre. If you go through the Telephone Directory you could find out this puzzling entry—Postal Research Centre under the general heading of the Post and Telegraph Department. Why do I say puzzling? Because even senior postal officials have

little idea of the goings on at the Centre. Actually no postal official is ever allowed admittance into its precincts and it is not a P&T establishment at all. Its name is only a misleading cover under which it carries on mail censorship and it is controlled by the Intelligence Bureau of the Government of India.

Sir, this matter was raised in the Parliament previously also. Honourable Member, Mr. Vajpayee had raised this matter on the floor of the Lok Sabha. At that time, a ruling was given. It would be proper on my part to draw the attention of the House to the ruling given by the then Speaker of the Lok Sabha, honourable Mr. Dhillon in the year 1974. There he ruled that the Members of Parliament were within their rights to obtain secret or confidential Government documents not disclosing in public without even though leakage or stealth or in an irregular manner. So even the Members can get valid information, vital information through stealth. The Speaker gave the ruling. The Members were entitled to obtain secret or confidential documents and they need not inform them the source of information. This is the protection that the Members of Parliament have got. But if the mail of the Members of Parliament are subjected to interception, the ruling given by the Speaker is thrown to the wild, then the source of information will be known to the Government. Then, the people in the interest of the country who supplied the information to the Members of Parliament may be harassed, may be prosecuted.

Sir, in the ruling given by the Speaker of the Lok Sabha on the matter of privilege raised by Mr. Vajpayee in the Lok Sabha, again by Mr. Advani here in the Rajya Sabha, the Australian precedent was quoted in the ruling. It is very intresting to go through the Australian precedent because it is a Commonwealth country. This ruling in the Australian Parliament was given in the year 1944 before the end of the Second World War, that, is, when the Second World War was on.....

Thank you very much, Sir. So, I have got your darshan now.

THE MINISTER OF ENERGY AND THE MINISTER OF COMMUNICATIONS (SHRI VASANT SATHE): I am sorry.

SHRI V. GOPALSAMY : I think during the regime of hon. Mr. Vasant Sathe, he will definitely do something to protect the Members of Parliament on this account. In the year 1944 in Australia, an Australian MP, Mr. Archie Galbraith Cameron, brought before the House of Representatives the following motion : "That the opening by censors of letters addressed to Members of the House...is a breach of the privilege of Parliament." The Leader of the Opposition, Mr. Menzies, who later became Prime Minister for many years, supported Mr. Cameron's contention in principle but moved a qualifying amendment: that after the word "addressed" the following words be inserted "by other than service personnel or persons residing in operational areas." The Prime Minister of Australia, Mr. J. Curtin quoted the Post and Telegraph Censorship Order which laid down that "the censor might open and examine all postal articles as defined in the Post and Telegraph Act." He added that his own mail was subject to censorship. The Prime Minister stated that his own mail was subject to censorship. Nevertheless, the Prime Minister of Australia gave the green signal to the Attorney-General Mr. Evatt to offer that "the Government would have the question examined by a committee representing both sides of the House". The motion and the amend ment were thereupon withdrawn. Then the committee was constituted and the committee submitted its report. The committee, in its report, gave the recommendation that during war time the mail could be intercepted under grave conditions. But the Member whose mail is being intecepted should be immediately informed about the interception of the mail. Sir, even during war time this ruling was given in Australia. I cannot imagine this even during peace time in India. When we claim that India is the largest functioning democracy of the world. I do not understand the rationale

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behind the moves of the Government to intercept the mail not only of M.Ps.— I am not pleading only Members of Parliament or Members of Legislatures—but of all citizens of this country. the interception of the mail of any citizen of this country is a nasty thing, indecent thing. It is a snooping device of the Government to peep into the private affairs of the people. Sir, it would be very relevant on my part to tell you what happened to me. I hope, you might well remember that I brought a privilege motion in this House about interception of mail, that is postal articles of any description emanating from and coming to my address, being subject to censorship. This order was passed by the Government of Tamil Nadu. Sir, when in the Lok Sabha the matter was raised, the Members could not substantiate the charge because they could not establish it with evidence. Here, I established my case with evidence. This is the photostat copy of the order, in the name of Governor, by the Chief Secretary of Tamil Nadu issued on 21st July 1983. (*Interruptions*) This order was issued on 21st July 1983. I quote:

"Public Department

(Abstract)

Indian Post Office Act, 1898 (Central Act VI of 1898)—Inteception of Correspondence—Vai. Gopalsamy, MA.B.L., M.P., Kuruvikulam, Tirunelveli District.

.....

"WHEREAS the Governor of Tamil Nadu is satisfied that it is necessary to make the following order in the interest of the Public safety and tranquillity:

Now, therefore, in exercise of the powers conferred by Section 26(1) of the Indian Post Office Act, 1898 (Central Act VI of 1898), the Governor of Tamil Nadu hereby directs that for the period of one year from date of order upto and inclusive of 31-1-84 all postal articles of any description whatsoever in the course of transmission by post addressed to or emanating from

Vai. Gopalsamy, MA. BL., M.P. Kuruvikulam, Tirunelveli District,

shall be intrecepted and detained and delivered to the Superintendent of Police, Special Branch, C.I.D., Madras or any person deputed by the said Superintendent in this behalf."

5.00 P.M.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): Mr. Gopalsamy, now it is 5 o'clock. We will adjourn now.

The House then adjourned at one minute past five of the clock till eleven of the clock on Monday, the 28th March, 1988.

MGIPMRND—Jah III—60 RS—16-6-88—400.